

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN C. CARPENTER, et al.,

Defendants,

and

COUNTY OF ELKO,

Defendant/Counter-Claimant,

THE WILDERNESS SOCIETY, et al.,

Defendants/Intervenors/Cross-Claimants.

Case No. 3:99-cv-00547-MMD-WGC

ORDER

RE EVIDENTIARY HEARING


After hearing from the parties, the Court granted Elko County's request for an evidentiary hearing on the issue of whether Elko County can establish a right-of-way under Revised Statute 2477. The Court finds that such a hearing is appropriate as part of the Court's review of the proposed consent decree, particularly in light of the heightened clear and convincing burden of proof required of Elko County.¹ The Court agrees with TWS that an evidentiary hearing on its cross-claims is not appropriate because review of TWS's cross-claims under the Administrative Procedure Act, 5 U.S.C. § 702, is limited to the administrative records.

¹The Court agrees with the United States and TWS that Elko County must establish its claimed right-of-way under Revised Statute 2477 by clear and convincing evidence. (Dkt. no. 507.)

1 The Court has ordered the parties to confer and file a joint pre-hearing statement.
2 The parties are directed to include their respective list of witnesses and documents in
3 the statement. After further consideration, the Court finds that a set of proposed findings
4 of fact and conclusions of law would provide a road map for the Court during the
5 evidentiary hearing. Therefore, the parties are directed to include joint proposed findings
6 of fact and conclusions of law in the pre-hearing statement. The Court will set a briefing
7 schedule for post-hearing briefs at the evidentiary hearing's conclusion.

8 The joint pre-hearing statement is due on September 29, 2014. The parties must
9 raise any issues that must be resolved by the time of the evidentiary hearing in a motion
10 filed on the same date.

11 DATED THIS 18th day of August 2014.

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14 MIRANDA M. DU
15 UNITED STATES DISTRICT JUDGE
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